

ENTERED

May 26, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOAQUIN ALVAREZ,

Plaintiff,

VS.

REGIONAL DIRECTOR, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:21-CV-00222

ORDER ADOPTING MEMORANDUM & RECOMMENDATION

Before the Court is Magistrate Judge Julie Hampton's Memorandum and Recommendation (M&R). (D.E. 23). The parties were provided proper notice of, and the opportunity to object to, the Magistrate Judge's M&R. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); General Order No. 2002-13. No objection has been filed. When no timely objection has been filed, the district court need only determine whether the Magistrate Judge's M&R is clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989) (per curiam); *Powell v. Litton Loan Servicing, LP*, No. CIV. A. H-14-2700, 2015 WL 3823141, at *1 (S.D. Tex. June 18, 2015) (Harmon, J.).

Having carefully reviewed the proposed findings and conclusions of the Magistrate Judge, the filings of the parties, the record, and the applicable law, and finding that the M&R is not clearly erroneous or contrary to law, the Court **ADOPTS** the M&R in its entirety. (D.E. 23). Accordingly:

(1) The Court **RETAINS** the following claims:

- a. Plaintiff's Eighth Amendment excessive force claim for pushing and/or shoving against John Doe Transportation Officer No. 1 in his individual capacity; and

- b. Plaintiff's Eighth Amendment deliberate indifference claim regarding the conditions of Plaintiff's confinement in administrative segregation against Warden Sifuentes in his individual capacity. *See* (D.E. 20).

(2) The Court further:

- a. **DISMISSES** Plaintiff's claim for money damages against Defendants in their official capacities as barred by the Eleventh Amendment;
- b. **DISMISSES with prejudice as moot** Plaintiff's claim seeking injunctive relief against Warden Sifuentes in his official capacity; and
- c. **DISMISSES with prejudice** Plaintiff's claims against the remaining defendants as frivolous and/or for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1). *See* (D.E. 20).

SO ORDERED.



DAVID S. MORALES
UNITED STATES DISTRICT JUDGE

Dated: Corpus Christi, Texas
May 25, 2022